

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: BEXTRA AND CELEBREX
MARKETING SALES PRACTICES AND
PRODUCT LIABILITY LITIGATION

CASE NO. 05-CV-01699 CRB

MDL No. 1699

This Document Relates To:

John Bolwell	05-3902 CRB
Alane Davis	05-3902 CRB
John Barker	06-0057 CRB
Jack Andrews	06-2713 CRB
Thelma Andrews	06-2713 CRB
Louise M. Porac	06-6779 CRB
Rhonda Monger	08-4187 CRB
Teecola F. Kendrick	08-4281 CRB
Barbara Ann Smith	08-4282 CRB
Debra Kinds	08-4283 CRB

**ORDER TO SHOW CAUSE WHY
PLAINTIFFS SHOULD NOT BE
DISMISSED FOR LACK OF
PROSECUTION**

Date: October 14, 2011

Time: 10:00 a.m.

Judge: Hon. Charles R. Breyer

This multidistrict litigation has been pending before this Court since September 6, 2005, when the Judicial Panel on Multidistrict Litigation (“JPML”) coordinated certain cases involving Bextra and Celebrex and assigned them to this Court. After extensive discovery, motions practice, and a bellwether selection process, in May 2008, immediately before the start of the first bellwether trial in these MDL proceedings, the parties informed the Court that they had resolved in principle a large number of the product liability cases on the Court’s docket and anticipated

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1 resolving a large number of the remaining product liability cases. On October 17, 2008, the Court
2 issued Pretrial Order No. 31, which required certain remaining product liability plaintiffs – those
3 who had not resolved their claims in a settlement process overseen by Special Master Fern M.
4 Smith – to provide case-specific expert reports on causation (“the *Lone Pine* Order”), which
5 further advanced the parties’ resolution efforts. Over the past three years, with the able assistance
6 of Special Master Smith and Plaintiffs’ and Defendants’ Liaison Counsel, the parties resolved the
7 vast majority of the remaining product liability cases. The Court recognizes that the process of
8 finalizing the product liability settlements has been a complex one that has required extensive
9 effort from the parties given the large number of cases at issue. In consultation with Plaintiffs’
10 and Defendants’ Liaison Counsel, the Court has granted the parties considerable time to complete
11 the settlement process.

12 While the Court has allowed substantial time to allow the product liability settlement
13 process to conclude, the Court sees no reason why the parties cannot complete long-pending
14 product liability settlements this year. On November 22, 2010, this Court entered an Order to
15 Show Cause Why All Plaintiffs Other Than Those Listed in Exhibit B Should Not Be Dismissed
16 for Lack of Prosecution (“the November 22, 2010 OSC”). *See* Docket No. 3445. Five of the ten
17 above-captioned Plaintiffs (John Bolwell, Louise M. Porac, Rhonda Monger, Barbara Ann Smith
18 and Debra Kinds) were listed in Exhibit B to the November 22, 2010 OSC. These five Plaintiffs
19 were not ordered to appear before the Court at the subsequent hearing on December 17, 2010,
20 because they had not executed a settlement agreement with Pfizer (or reached an agreement in
21 principle) at that time. Two of the above-captioned Plaintiffs (Alane Davis and Teecola F.
22 Kendrick) were not listed in Exhibit B to the November 22, 2010 OSC, but have asserted claims
23 that derive from the claims of Plaintiffs that were listed in that Exhibit (John Bolwell and Willie
24 Kendrick, respectively). The remaining three above-captioned Plaintiffs (John Barker, Jack
25 Andrews and Thelma Andrews) were not among the Plaintiffs listed in the exhibits to the
26 November 22, 2010 OSC. At this time, all of the above-captioned Plaintiffs except for John
27 Barker, Jack Andrews and Thelma Andrews have reached an agreement in principle with Pfizer.
28

1 After carefully considering the status of the litigation and the ample notice provided to
 2 litigants by the Court and the Pfizer Defendants, the Court hereby ORDERS as follows:

3 All counsel for the above-captioned Plaintiffs (or Plaintiffs themselves, if they are pro se)
 4 must appear in person at the hearing on October 14, 2011 at 10:00 a.m. to show cause as to why
 5 Plaintiffs' lawsuits should not be dismissed with prejudice for a lack of prosecution. *See* Fed. R.
 6 Civ. P. 41. If any Plaintiff wishes to contest the dismissal of his or her lawsuit for failure to
 7 prosecute, the Plaintiff shall notify the Court in writing on or before October 4, 2011 of the
 8 reasons the case should not be dismissed and shall provide a copy of any such communication to
 9 counsel for the Pfizer Defendants and Plaintiffs' Liaison Counsel. Plaintiffs are warned that
 10 failure to communicate with the Court in writing as set forth above and appear at the hearing will
 11 result in dismissal of the Plaintiff's claims with prejudice.

12 **IT IS SO ORDERED.**

13
 14 August 24
 Dated: ~~October~~ __, 2011

